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Supreme Court of the United States

OCTOBER TERM.

No. 448

THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, M. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Petitioners,

versus

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND FOR SUPPLEMENTAL RELIEF.

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RICHARD H. MERRITT,
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THE MASSACHUSETTS COMPANY, a joint venture composed of SOUTHERN SCRAP MATERIAL COMPANY, LTD., a corporation, M. D. FRIEDMAN COMPANY, a corporation; and EASTERN SCRAP AND SALVAGE COMPANY, a corporation,

Petitioners,

versus

THE STATE OF FLORIDA, by and through RICHARD W. ERVIN, as Attorney General of the State of Florida, et al.,

Respondents.

PETITION FOR CERTIORARI AND SUPPLEMENTAL RELIEF.

The petitioners are The Massachusetts Company, a joint venture composed of Southern Scrap Material Company, Ltd., a corporation, M. D. Friedman Company, a corporation; and Eastern Scrap and Salvage Company, a corporation.

The respondents are The State of Florida, by and through Richard W. Ervin, as Attorney General of the

State of Florida, Leroy Collins, as Governor of the State of Florida, Ray E. Green, as Comptroller of the State of Florida, J. Edwin Larson, as Treasurer of the State of Florida, Richard W. Ervin, as Attorney General of the State of Florida, and Nathan Mayo, as Commissioner of Agriculture of the State of Florida, composing the Trustees of The Internal Improvement Fund of the State of Florida, a component governmental agency of the State of Florida; Leroy Collins, as Governor of the State of Florida, R. A. Gray, as Secretary of State of the State of Florida, Richard W. Ervin, as Attorney General of the State of Florida, Ray E. Green, as Comptroller of the State of Florida, J. Edwin Larson, as Treasurer of the State of Florida, Thomas D. Bailey, as State Superintendent of Public Instruction of the State of Florida, and Nathan Mayo, as Commissioner of Agriculture of the State of Florida, constituting the State Board of Conservation of the State of Florida, a component governmental agency; and Richard W. Ervin, as Attorney General of the State of Florida, in his official capacity as Attorney General of the State of Florida, Pensacola Sports Association, a non-profit corporation and Pensacola Anglers and Hunters Club, a non-profit corporation.

OPINIONS BELOW.

1. The opinion of the Chancellor of the First Judicial Circuit of the State of Florida, in and for Escambia County, denying the injunctive relief sought by the respondents is unreported.

2. The opinion of the Supreme Court of the State of Florida on original hearing, together with the opinion of the Supreme Court of Florida on re-hearing, appear in 95 So. 2d 902, at page 902.

JURISDICTION.

(i) The Decree of the Chancellor was rendered September 8, 1956, the first opinion of the Supreme Court of Florida was rendered November 16, 1956, and the opinion on re-hearing was rendered June 12, 1957.

(ii) The statutory provision conferring jurisdiction is 62 Stat. 929 (Title 28, U.S.C.A. Section 1257). See also Supreme Court Rule 19. Said decision "has decided a Federal question of substance not theretofore determined by this court", and "has decided it in a way probably not in accord with applicable decisions of this court . . . has decided an important question of Federal law which has not been, but should be, settled by this court . . . has decided a Federal question in a way not coupled with applicable decisions of this Court", and also "has so far *departed* from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's power of supervision".

QUESTIONS PRESENTED.

1. IS THE SUBMERGED LANDS ACT OF 1953 UNCONSTITUTIONAL?

2. DOES THE STATE OF FLORIDA, BY REASON OF RIGHTS ACQUIRED UNDER THE SUBMERGED LANDS ACT TO BOTTOM LANDS UPON WHICH THE MASSACHUSETTS LIES, HAVE A TITLE TO THE WRECKED SHIP SUPERIOR TO THAT OF THE PETITIONERS?

3. DID NOT THE SUPREME COURT OF FLORIDA VIOLATE THE CONSTITUTION AND THE LAWS OF THE UNITED STATES WHEN THE MAJORITY HELD THAT THE STATE OF FLORIDA SUCCEEDED TO THE PREROGATIVE RIGHTS OF THE CROWN WHEN IT BECAME A SOVEREIGN STATE OF THE UNION AND HELD THAT "THE STATE OF FLORIDA HAS A POSSESSORY RIGHT OR TITLE TO THE WRECK OF THE MASSACHUSETTS SUPERIOR TO THAT OF THE COMPANY . . ."?

4. DID NOT THE SUPREME COURT OF FLORIDA VIOLATE THE CONSTITUTION AND LAWS OF THE UNITED STATES WHEN THE MAJORITY HELD THAT A STATE STATUTE WAS PARAMOUNT TO AND CONTROLLING WHEN THE SAME WAS IN DIRECT CONFLICT WITH AND VIOLATIVE OF THE GENERAL MARITIME LAW APPLICABLE TO POSSESSION AND OWNERSHIP OF A WRECKED SHIP RESTING ON THE BOTTOM OF THE GULF OF MEXICO IN NAVIGABLE WATERS?

5. WAS NOT THE DECISION OF THE SUPREME COURT OF FLORIDA SUCH A GROSS, CAPRICIOUS AND OBVIOUS ERROR AS TO DEPRIVE THE PETITIONERS OF DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISIONS?

6. WAS NOT THE TAKING OF THE VESSEL MASSACHUSETTS BY THE STATE OF FLORIDA FROM THE PETITIONERS A VIOLATION OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

1. That segment of the Fourteenth Amendment to the Constitution of the United States wherein it is provided:

> "* * * * now shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

2. The Fifth Amendment as a part of the Bill of Rights provides:

> "* * * Nor shall private property be taken for public use, without just compensation".

3. Article III, Section 2, clause 1 provides:

> "The judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction".

4. Chapter 2.01, F. S. A., provides:

"Common law and certain statutes declared in force. The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state".

5. Chapter 705.01, F. S. A., provides:

"County Judge to order sale. Whenever any wrecked derelict goods, abandoned motor vehicle or other personal property shall be found in any county in this state, the county judge shall ascertain the amount and situation of the same, and by his written order shall cause the sheriff to take charge thereof and sell the same at public outcry, after giving a reasonable public notice of the time and place of such sale".

Chapter 705.02, F. S. A., provides:

"Mode of ascertaining salvage. In order to ascertain the quantum of salvage to be paid to the person finding and reporting such wrecked derelict goods, abandoned motor vehicle or other personal property, the county judge shall appoint two disinterested citizens of the county as arbitrators (who shall be authorized in case of disagreement to select an umpire), who shall determine the quantum of salvage, not to exceed one-half the proceeds of such goods, to be paid to the salvors or persons finding and reporting such goods, and the county judge shall

draw his order upon the sheriff, who shall pay the same for the amount so awarded in favor of the salvors or persons finding and reporting."

6. Chapter 715.01, F. S. A., provides:

"Title to personal property found in public places. The title to all personal property found in or upon public conveyances, premises at the time used for business purposes, parks, places of amusement, public recreation areas and other places open to the public is hereby vested in the finder unless the same be called for or claimed by the rightful owner thereof within six months after the finding thereof. Employees of public transportation systems shall be deemed agents of such transportation system and personal property found on public conveyances, in depots, and garages of said transportation system shall be turned in to the proper person or department designated to receive such property by the said transportation systems, and such property shall be securely kept for the period of time as required by this section after which time if unclaimed by the rightful owner the title of such property shall be vested in the transportation system and not in the employee".

STATEMENT OF THE CASE.

The United States Battleship, MASSACHUSETTS, in the year 1922 was scuttled and sunk 1.2 miles off the entrance to Pensacola Bay in Escambia County, Florida, in navigable waters in the Gulf of Mexico. A portion of the

ship has always been and is now visible above the surface of the water. In the month of August, 1956, the petitioners, after securing a permit from the U. S. Corps of Engineers, and depositing an indemnity bond in the sum of $25,000.00, took possession of and commenced salvaging the battleship. At no time prior to the commencement of the work did the State of Florida lay any claim to said battleship. Within a few days thereafter, the respondents wired the Secretary of the Navy and ascertained that the battleship had been abandoned by the Navy Department and the United States of America. The respondents then filed a complaint for an injunction in the Circuit Court of Escambia County, Florida. A temporary injunction was granted and on final hearing, the injunction was dissolved and the Chancellor held that the complaint be dismissed at the cost of the plaintiff. The respondents thereupon appealed to the Supreme Court of Florida and on November 16, 1956, a decision was returned which reversed the holding of the Chancellor. A petition for re-hearing was filed by the petitioners and the same was granted. Thereafter on June 12, 1957, the decision on re-hearing was handed down by the Supreme Court of Florida and from that decision certiorari is sought to protect the constitutional rights of the petitioners and to obtain supplemental relief.

THE FEDERAL QUESTIONS WERE APPROPRIATELY PRESENTED AND ADVERSELY DETERMINED.

In paragraph numbered 6 of the original complaint of the respondents they alleged "title to all submerged sovereignty lands not vested in the Trustees of the Internal Improvement Fund of the State of Florida is vested in the State of Florida as a sovereign state". This allegation was specifically denied in paragraph numbered 4 under the 8th defense of the petitioners. Subsequently in paragraph numbered 9 of the complaint, the respondents specifically set forth and relied upon the Submerged Lands Act (67 Stat. 29, 43 U. S. C. 1301, et seq.). In paragraph numbered 7 of the 8th defense, the petitioners answered as follows "7. Defendants admit that the Submerged Lands Act as alleged in paragraph 9 of the complaint is as partially quoted, but they further deny that it is material to the issue of the ownership of the subject matter of this suit or that by said Act the State of Florida was vested with ownership of the property or land involved in this suit."

In raising the question of the general maritime law in paragraph numbered 19 of the 8th defense, the respondents said:

> "19. The defendants deny each and every allegation of paragraph 21 of the Complaint and further allege that any assertion and exercise of jurisdiction, ownership or control over wrecks, sunken ships and other properties as alleged, is without lawful authority and contrary to law."

In raising the applicability of the general maritime law, the respondents in the petition for re-hearing said:

> "8. The Court failed to consider the fact that *Chapter 2, Florida Statutes 1955* prohibited the adoption of the common and statute laws of England which were of a general and not of a local nature which were inconsistent with the Constitution and laws of the United States and of the Acts of the Legislature. The opinion of the Court in attempting to apply what it deemed to be the applicable common law is clearly contrary to the maritime law of the United States."

In addition to the foregoing, in the petition for re-hearing the respondents said:

> "9. The Court failed to consider the fact that state legislatures are without power to impair the rules of the general maritime law. *The Lottawanna, 21 Wallace 558, 22 Law Ed. 654* and numerous other cases so hold. The recent case of *J. B. Effenson Company vs. Three Bays Corp., Ltd.*, decided November 14, 1956, in the Fifth Circuit Court of Appeals, held in effect that a statute of limitations of the State of Florida would not be applied when it was contrary to the general maritime law."

The constitutional questions relating to a violation of the 5th and 14th Amendments to the Constitution of the United States were appropriately raised in the petition for re-hearing as follows:

"10. The Court overlooked the fact that the appellees had possession of the property and could not be divested

of their property rights without the payment of just compensation, for to do so would violate the Fourteenth Amendment of the Constitution of the United States which guarantees that no state shall deprive any person of life, liberty or property without due process of law."

Both Appendix A and B contain the foregoing matters relating to the Complaint of the respondents and the Answer of the petitioners. Appendix H contains the petition for rehearing alluded to above.

The Supreme Court of Florida evaded or adversely decided all of the Federal questions which were timely and properly raised so as to give this court jurisdiction to review the judgment for Writ of Certiorari.

ARGUMENT.

There are a number of special and important reasons affecting not only the petitioners but also the public, the various states and the Federal Government, why the writ should be granted.

There are several complicated constitutional questions which present themselves at the very outset relating to the property rights of individuals as opposed to the power of a state to usurp the ownership of abandoned property lying offshore, in navigable waters.

There is also the further problem of the general maritime law enunciated by the United States courts being

challenged by a state judicial fiat, and a decision by a state supreme court so arbitrary and capricious as to be such a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. The decision of the Florida Supreme Court has shocked our best legal scholars, law school professors, practicing attorneys, judges and members of the Florida Bar.

QUESTION 1.

Prior to the passage of the Submerged Lands Act of 1953, there was grave doubt as to whether or not Congress could constitutionally bestow a gift upon a few states to the detriment of the remainder of the states who were not such fortunate recipients. There was also grave doubt that Congress had the power to dispose of rights vested in the United States as an incident of national sovereignty. *Volume 2, U. S. Code Congressional & Administrative News, Pages 1385 to 1640*, inclusive, contains an exhaustive study of the legislative history of the Act. Pages 1618 to 1640, inclusive, contain a definitive discussion of the minority view by Solicitor General Philip B. Perlman.

The Supreme Court of the United States, in the case of *State of Alabama v. Texas, 347 U. S. 372, 98 Law Ed. 689, 74 S.C.R. 481*, considered the constitutionality of the statute and failed to grant Alabama and Rhode Island leave to file complaints contesting the constitutionality of

the Submerged Lands Act of 1953. The Court therefore, in effect, held that the complaints were frivolous but nevertheless Mr. Justice Black and Mr. Justice Douglas both dissented. It seems that the Court should forever settle the question of "equal footing" and the "incidents of national sovereignty involved once the low water mark is passed". If the Court were to find that the Act was unconstitutional, then that decision would be conclusive with respect to the issues of this case. The case of *United States v. California, 332 U. S. 19, 91 Law Ed. 1889, 67 S.C.R. 1658*, would then stand unchallenged as the controlling law.

QUESTION 2.

The Submerged Lands Act of 1953 served only to quitclaim to the several states certain things which were specifically enumerated which included title to and ownership of "the lands beneath navigable waters within the boundaries of the respective states and the natural resources within such lands and water. . . .". The Act was restrictive in nature and specifically reserved certain rights to the United States, one of these rights being the use, development, improvement or control by the United States of said lands and waters for purpose of navigation. The Act under no reasonable construction could be held to transfer to the State of Florida a sunken battleship lying in offshore navigable waters, owned or abandoned by the United States. It therefore follows that title to said property must have been vested either in the United States of America under either its legitimate right of ownership or under the decision of the *California* case,

and never was this title imparted to the State of Florida. The State, in its complaint, admitted that the vessel had been abandoned by the Navy Department of the United States and the proof was clear that the petitioners had taken exclusive possession to the property prior to any affirmative action taken by the State of Florida. The petitioners could only be divested of their property by due process of law, which would include the payment of just compensation.

QUESTION 3.

For the Supreme Court of Florida to bottom its decision on the succession to the prerogative right of the sovereign of England is absurd. In the case of *United States of America v. State of California, supra,* and the cases of *United States of America v. State of Louisiana, 339 U.S. 699, 94 Law Ed. 1216, 70 Sup. C. 914;* and the case of *United States of America v. State of Texas, 339 U.S. 707, 94 Law Ed. 1221, 70 Sup. C. 918,* the Supreme Court of the United States conclusively held that the United States was possessed of paramount rights in and full domain and power over, all offshore lands beneath navigable waters. The Supreme Court emphatically stated in the case of *U. S. v. Texas, supra, (339 U.S. 719):*

> "Once low water mark is passed, the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign."

and in the case of *Alabama v. Texas, supra*, it was said *(347 U.S. 283)*:

> "Any property interest which the States may earlier have held in the bed of the marginal sea were so subordinated to the rights of sovereignty as to follow sovereignty."

It is therefore apparent that any rights that the State of Florida might claim could only be rights which they obtained from the United States of America.

On the other hand, even if the foregoing were not true, it is nevertheless clear that the King's Prerogative is not a part of the law of the State of Florida. In *Volume 3, Florida Statutes 1941*, entitled "Helpful and Useful Matter", on Page 3 in the foreword, there is an explanation to the effect that the Legislature on December 27, 1845, authorized the Governor to appoint a suitable person to collect and arrange under appropriate heading all of the Statutes of Great Britain in force in this State. Pursuant to that authorization, Leslie A. Thompson, Esq., was commissioned by the Governor to compile the British Statutes in force in the State of Florida. Judge Thompson, who later became a judge on the bench of the Supreme Court of Florida, completed his assignment and one copy of the manuscript is now available in the Library of the Supreme Court of Florida. As was stated by Guy W. Botts, Esq., in the foreword, the ability of Judge Thompson as a compiler was heartily acknowledged by his contemporaries.

Later, Justice Fred H. Davis, while Attorney General of Florida, caused to be published a summary of the statutes and this was made available to the Florida Bar. We earnestly suggest to the Court that this compilation of British Statutes in force in the State of Florida, be carefully considered and it should be noted that the British Statutes of *3 Edw. I, c.4* and *17 Edw. II, c.11* which were cited by Mr. Justice Roberts in his opinion and held to be controlling, *are not listed among the British Statutes in force in the State of Florida.* See Table of Statutes Arranged Alpabetically, *Vol. III, Florida Statutes, 1941, p. 77.*

See also *University of Florida Law Review, Vol. III,* page 303, the article by James W. Day. entitled "Extent to Which the English Common Law and Statutes are in Effect". On pages 308-310, he says:

> "Section 2.01 of Florida Statutes 1949 adopts only such portions of the English common law and statutes in effect on July 4, 1776, as are of a *general nature.* It expressly excludes those portions that are local in character. Even in the absence of an express exclusion of local English common law and statutes in the English-law-adopting statute of a jurisdiction, it is "held that only the English law that is of general application and not that which is *local to England* is in effect. As was stated by the Justices of the Supreme Court of Pennsylvania in their report made to the Legislature of the State in 1808 under statutory mandate, there are included within this exception *'a multitude of English statutes, relating to the King's Prerogative, the rights and privileges of the nobility and clergy, the local com-*

> *merce and revenue of England, and other subjects unnecessary to enumerate'.* Similarly, the so-called Black Act for the suppression of poaching was held not to be in effect in Georgia, since it was 'founded upon a tender solicitude for the amusement and property of the aristocracy of England'. (Emphasis supplied.)

How utterly foreign to our customs and institutions is the King's Prerogative. We have no droits of Admiralty in Florida. We have no office of Lord High Admiral in our system of government. We have no prerequisites of admiralty. We have no admiralty law other than the general maritime law of the United States.

The case of *Russell, et al. v. 40 Bales of Cotton, 21 Fed. Cases #12154*, cited by Mr. Justice Drew in his dissenting opinions, discussed the origin and cause of establishment of claims of sovereignty or as is more commonly called, the King's Prerogative. The court concluded that the prevention of the barbarous practice of destroying the property of the shipwreck was the object of the law in conferring this prerogative on the King, but refused to apply the prerogative largely because

> "The reason for sovereign interference is satisfied and the wrong originally complained of remedied."

The Florida court has held that the doctrine that when reason for any rule of law ceases, the rule should be discarded, is part of our common law, *Ripley v. Edell, 61 So. 2d 420*. This case was cited by Mr. Justice Drew in his dissent, but evidently the argument was overlooked by

the majority of the court. Likewise, the Court must have overlooked the case of *In Re Moneys in the Registry of the District Court, 170 Fed. 470,* wherein the court, giving a thorough explanation of the fact that the reason for the rule failed to exist, refused to apply the King's Prerogative rule in favor of the Government as against salvors. The Court also must have overlooked the principle so vividly set forth in *Russell v. 40 Bales of Cotton, supra,* that the King's Prerogative has not been considered sufficiently definite, regular and certain to establish a principle of national law beyond this: that the protection of shipwrecked persons and property is in the natural sovereignty.

In *Hale's De Jure Maris, at page 38, Parag. 2d,* he said:

> ". . . for though the common law give the King bona wreccata as shall be shown, yet because it was lex odiosa to add affliction to the afflicted it was bound up by as many limits and circumstances and to as narrow a compass as might be."

The United States as heretofore set forth has not accepted this rule of the King's Prerogative. Clearly, even in England at the time of its applicability, the rule was a hated one and the Supreme Court of Florida must surely have not intended to expand and enlarge the rule as it did in its opinion, and it must have overlooked the fact that even in England as set forth above, the rule was an odious one, should be circumscribed as much as possible and, in fact, has never been adopted by the United States or other states in our Union.

QUESTION 4.

State legislatures are without power to impair the rules of the general maritime law. *The Lottawanna, 21 Wallace 558, 22 Law Ed. 654,* and numerous other cases so held. The case of *In Re Highland Navigation Corp., 24 Fed. 2nd 582,* is an extremely important case on this particular question. In that case the City of New York had passed an ordinance which provided that in case any vessel shall be sunk or wrecked and be abandoned for ten days the owner would be notified to remove the same, and if he failed to remove it he would have to pay the costs of removal. The Highland Navigation Corp., had a vessel to sink and abandoned the vessel, refusing to remove it. The court held, text 584:

> "(3) Statutes imposing on an owner of a wreck the duty to remove it, or to pay local authorities the expense of removal, have been held not to apply to an owner whose vessel has been wrecked and abandoned. *The wrecked vessel after abandonment has no owner.* See Winpenny v. City, 65 Pa. 135; Thames Towboat Co. v. Fields (D.C.) 287 Fed. 155." (Emphasis supplied.)

The recent case of *J. B. Effenson Company v. Three Bays Corp., Ltd., decided November 14, 1956, in the Fifth Circuit Court of Appeals,* held in effect that a statute of limitations of the State of Florida would not be applied when it was contrary to the general maritime law.

The State of Florida has recognized the rule in the only reported case of the Supreme Court, prior to the

case at bar, touching this particular question which is the case of *Howard v. Sharlin, 61 So. 2nd 181.* That case specifically held, after citing with approval the case of *Greevy v. Breedlove, 12 La.Ann. 745,* that salvors may take possession and control of the said vessel. The case in effect held also that the salvor was entitled to the lead contained in said vessel.

The Supreme Court of Florida inferred that *Chapter 705, Florida Statutes* might be relevant. This statute provides for the disposition of wrecked derelict goods, abandoned motor vehicles and other personal property found within a county of the state. Clearly this statute should not be held to impair the rules of general maritime law. In fact, this statute does not apply to this case at all and if there is any relevant statute, as was stated by Mr. Justice Drew in his dissent, it is *Chapter 715, Florida Statutes Annotated.*

In the case of *Thompson v. United States, 62 Ct. of Claims 516,* the court, speaking through Judge Hay, said, (text 534):

> "The facts show that the vessel was abandoned by its owners in the navigable waters of the United States, and being so abandoned it became the property of said decedent when he reduced it to his possession. This he did with the sanction of the authorities of the United States, and the United States recognized the ownership of said decedent when the United States requisitioned and took over the vessel and made an award to him for its value.

"It seems well settled that when a vessel is derelict and abandoned in the navigable waters of the United States or anywhere else it belongs to that person who finds it and reduces it to possession. Congress could undoubtedly provide that the proceeds of derelicts and abandoned vessels in the navigable waters of the Uinited States be paid into the Treasury; but no such law has been passed, and until it is the principles of natural law must prevail. See Gardner v. 99 Gold Coins, 111 Fed. 552; United States v. Tyndale, 116 Fed. 820; In re Moneys in Registry, 170 Fed. 470; Gibson v. United States, 166 U.S. 269; Hardin v. Jordan, 140 U.S. 371; Pollard's Lessee v. Hagan, 3 Howard 212, 230; Murphy v. Dunham, 38 Fed. 503, 509, 510."

The extremely well reasoned case of *Murphy v. Dunham, 38 Fed. 502*, applied the admiralty rule to a cargo of coal lying at the bottom of Lake Michigan.

In the case of *Pearson v. Black, 120 S.W. 2d 1075*, the Court said:

"We know of no rule or principle of law to the effect that abandoned personal property becomes the property of him upon whose land it happens to be left."

In the case of *Dalmes v. Stothatos, 80 Fed. Sup. 828*, the Court held that salvage is a question arising under *jus gentium* and does not ordinarily depend upon municipal laws of particular countries. To the same effect is *Usatorre v. Compagnia Argentina, 64 Fed. Sup. 370.*

Mr. Justice Bradley in the *Lottawanna* case, *supra*, succinctly stated the general rule as follows:

> "That we have a maritime law of our own, operative throughout the United States, cannot be doubted. The general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted was most certainly intended and referred to when it was declared in that instrument that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction.' . . . .
>
> "One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several states, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commerical character affecting the intercourse of the states, with each other or with foreign states."

QUESTION 5.

We have solicited and received the aid of Dean Roscoe Pound, the Editor of West Publishing Company, the Editor of the Lawyers Cooperative Publishing Company, the Editor in Chief of the American Law Book Company, a graduate research assistant at the University of Virginia, the Editor of Florida Law Review, various professors on "Personal Property" and eminent lawyers and judges throughout the State of Florida. Not one of the

foregoing persons was able to reconcile the decision of the Supreme Court of Florida with any recognized, established principles of law. A number of attorneys who have no interest in the case other than that as lawyers have stated that in their opinion this is the poorest decision ever handed down by the Supreme Court of Florida.

We have searched the reported cases in the United States and a number of British cases in an effort to find one case where a State asserted a claim to abandoned personal property in opposition to the claim of a private citizen having prior possession. We have failed to find a single case of this nature. In this case, the State stood back, acquiesced and allowed the petitioners to spend large sums of money in reliance on what is generally understood to be the law, and then after doing so, the State, at a late date, although it never asserted any right or claim to the property for some thirty years, now attempts to divest a private citizen of the property without due process of law. The conduct and action of the State must certainly shock the conscience of the Court, for never in the history of any reported case have we been able to find a similar action taken with respect to personal property.

In our brief to the Florida Supreme Court, we stated that in our opinion if the law for which the respondents contend is applied, then all of the settled law, maritime and property law of the United States, and literally of the world, relating to an abandoned wreck of a ship will be upset. Mr. Justice Roberts in his opinion, on page 907, quoted that statement and then proceeded to hold

that the King's Prerogative applied. We have heretofore discussed that phase of the case but we earnestly contend that the Supreme Court of Florida has committed such a gross, capricious and obvious error as to deprive the petitioners of due process of law, and such error calls for an exercise of this Court's power of supervision. How could a judge write the opinion in *Howard v. Sharlin, supra*, the one Florida case dealing with salvage, and then less than four years later the same judge write an opinion diametrically opposite without even mentioning the previous decision. We are not unmindful that this Court would be most reluctant to act, but we do feel that there is a precedent for such action as stated by Mr. Justice Cardozo in the case of *Roberts v. New York*, 295 *U.S. 264, 79 L. Ed., 1429.*

It is undoubtedly competent for Congress to enact such laws as may be determined to be proper and constitutional, but until such statutes are enacted it is certainly not proper for the State of Florida to encroach upon individual citizens by seeking the extension of the law by an interpretation that would be so wide and all-inclusive as to be in effect legislation by judicial interpretation and decision. However, only by this formula can the decision reached in this Court stand. Until some law is passed providing for its disposition upon the principles of our law as it exists today and of natural law, the property belongs to the finder, or in this case, the possessor.

The Constitution of Florida in Section 12 of its Declaration of Rights specifically sets forth that private property

shall not be taken without just compensation. In the instant case, the State, without any semblance of title, is attempting to ride roughshod over the rights of a private citizen whose rights are recognized by universal law. The fundamental rights of justice, equity and fair dealing should not allow the State to prevail. It must be kept foremost in mind that the statement of Mr. Justice Hughes, when he said "if citizens must turn square corners in their dealings with the State, then the State is held to the same standard of rectangular rectitude in its dealings with its citizens" applies to the respondents.

QUESTION 6.

The Court, in its opinion, must have overlooked the fact that the petitioners, by reducing the hulk of the "MASSACHUSETTS" to their possession, as was so found by the chancellor, could not be divested of their ownership and property rights without payment of just compensation. To do so would violate the *5th Amendment of the Constitution of the United States* which guarantees that no state shall deprive any person of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation. The *Constitution of Florida, in Section 12 of its Declaration of Rights*, specifically sets forth that private property shall not be taken without just compensation. The court, in its opinion, wholly ignored the rights of the petitioners, and, as heretofore set forth, wholly failed to consider the equities involved.

The Court proceeded on the theory that:

(1) The subject property was abandoned by expressed statement of the original owner, the United States Government;

(2) That the petitioners were in actual possession of this abandoned property.

Then it necessarily follows:

(1) That lawful divestation of the petitioners' rights so established must be by due process of law; and,

(2) That there was no due process of law; and,

(3) That there was no just compensation.

The maritime and civil law as administered by the Admiralty Court in England was not a part of the common law of England, nor was it adopted by *Florida Statutes 1955, Section 2.01.* The Federal Government, not the State, would be the proper sovereign to adopt the King's Prerogative with respect to droits in Admiralty, and this it has chosen not to do. In any event, for the State of Florida to assume, in 1956, the prerogative of the Crown as to droits of Admiralty, seems as inconsistent with the institutions and customs of this state as would hereditary succession to the Governor's chair.

There is no special mystery about the hulk of the "MASSACHUSETTS" lying off shore. The fact that it

was abandoned is unchallenged. The fact that it was reduced to possession by the petitioners is also unchallenged. The applicable law is the universal rule with respect to abandoned personal property.

CONCLUSION.

It is respectfully submitted that the writ should be granted for if this decision stands, generally accepted personal property and maritime law relating to abandoned wrecked vessels and other personal property lying in navigable waters will be overturned and the petitioners will be deprived of property which is rightfully theirs without just compensation or due process of law.

Respectfully submitted,

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CERTIFICATE.

This is to certify that copies of this brief have been served on opposing counsel on this, the .... day of September, 1957.

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